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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/714,292	11/17/2000	Takatoshi Yamanaka	1080.1084 (JDH)	4924

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EXAMINER

EDWARDS, PATRICK L

ART UNIT PAPER NUMBER

2621

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/714,292

Applicant(s)

YAMANAKA ET AL.

Examiner

Patrick L Edwards

Art Unit

2621

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-16.

Claim(s) withdrawn from consideration: \_\_\_\_\_

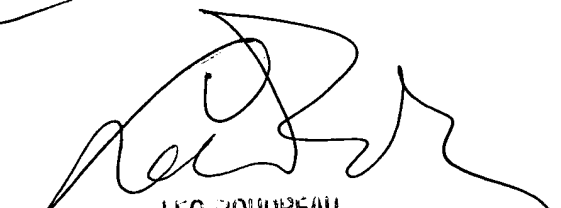
8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☒ Other: See Continuation Sheet

Continuation of 10. Other:

The objection to the specification, especially with regard to Tables 1-3 is withdrawn.

Applicant traverses the 112 rejection set forth in the prior action. The applicant's arguments have been fully considered but are not persuasive. In the previous action, the examiner asserted that the metes and bounds of the term 'a type of photography device' are not clear. The examiner further elaborated on the confusion of this term, asking whether a 'type of photography device' is a type of imager used to capture the radiographic image?, or whether it is the type of medical image that is captured. Applicant has cited a passage from the background of the specification (pg. 2 line 26 - pg. 3 line 6) which mentions a medical image photography device, and states that the setting conditions for of medical image photogrpahy devices differ. Applicant then states that, in light of this passage, one reasonably skilled in the art would understand that 'a type of photography device' is any type of medical imaging photography device used in the field of the invention. The examiner asserts that this does not help define the metes and bounds of the claimed term. The applicant goes on to state that specification provides adequate support for the claimed terms. However, this issue was never in question. The previous office action set forth a rejection under 35 USC 112 - 2<sup>nd</sup> paragraph, not 35 USC 112 first paragraph. The issue at hand is not that the specification provides insufficient support for this claimed term, but rather that the metes and bounds of the claimed term are not clear. Applicant's statement that "the type of photography device is any type of medical image photography device used in the field of invention", does not help cure the indefiniteness of this term.

Additionally, applicant traverses the prior art rejection from the fnal rejection, arguing that the Ogura '984 reference fails to teach or suggest the limitation of 'storing an image processing condition ... in accordance with the type of photography device and the part of the target when the radiation is obtained'. The examiner has taken this argument into consideration, but is not persuaded. As was stated in the previous action, the Ogura reference describes an image process condition determining means for determining and storing the image processing condition for the radiation image based on the irradiation field size and the photography portion of the object (see figure 29 in conjunction with col. 16 lines 42-46 and col. 17 lines 9-14). The crux of the applicant's traversal is the contention that the examiner improperly interpreted the irradiation field size of Ogura to be the same as the type of the photography device as recited in the claim (see remarks pg. 11). This contention, however, is a misinterpretation of the previous office action. The examiner is not directly analogizing or equating an 'irradiation field size' with a 'type of photography device'. Indeed, the claim does not require such a tight nexus. The limitation in question merely calls for an image processing condition to be stored in accordance with the type of the photography device and the part of the target. Applicant concedes that Ogura teaches that the image processsing conditions are stored in accordance with the part of the target, but traverses that the conditions are stored in accordance with the type of the photography device. In looking at figure 29 of the Ogura reference, though, it is unclear how an image processing condition could be stored that wasn't in accord with the type of photography device? This limitation appears to be inherent in the system. The examiner merely provided the term 'irradiation field size', because the size of the irradiation field is indeed a term that is related to the 'type of photography device'. Some types of photography devices would have larger irradiation fields than others, and so the examiner pointed out this specific part of the Ogura reference as a way of showing that the conditions were related to the type of photography device, and therefore met the claimed limitation of 'storing the condition in accordance with the type of photography device'.



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